

**Letter of Findings: 01-20180933
Income Tax
For the Year 2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual spent more than 183 days in Indiana in 2014. Individual did not establish that he had a new domicile in another state.

ISSUES

I. Income Tax–Residency.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-3-3; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer owed Indiana income tax for year 2014. Taxpayer protested the Department's determination. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax–Residency.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, "a resident" includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. Also of pertinence is the issue of domicile.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property.
- (2) Registering to vote.
- (3) Seeking elective office.
- (4) Filing a resident state income tax return or complying with the homestead laws of a state.
- (5) Receiving public assistance.
- (6) Titling and registering a motor vehicle.
- (7) Preparing a new last will and testament which includes the state of domicile.

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413.

Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96. *Id.* at 1317. **(Emphasis added).**

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon his domicile in Indiana. Of relevance is Indiana's homestead law. The applicable law for homestead is found at IC § 6-1.1-12-37(a)(2), which states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.
(**Emphasis added**).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh*, at 596.

In his protest letter, Taxpayer states, "I am protesting this tax bill []. This is a year I think that I didn't file even though the state of Indiana owed me money[.]" Further, Taxpayer states that his father "fell and requested that I move back to Wisconsin to take care of him. My main concern was organizing my life to move back to Wisconsin, so I ran out of time and didn't file because [the Department] owed me money." In other words, Taxpayer states that he did not file a return because in the past he had "always received a refund." During the hearing Taxpayer stated that he transferred jobs (from Indiana to Wisconsin) in order to be closer to his father. Taxpayer stated that he worked in Indiana for part of 2014 and moved to Wisconsin in August of 2014. The Department notes that January 1, 2014 to August 1, 2014, is in excess of the 183 days for purposes of IC § 6-3-1-12.

Taxpayer states his employer, herein "Company M," erroneously reported all of his income as being sourced from Indiana for 2014. In a letter provided to the Department, Company M states that Taxpayer was employed at Company M in 2014. Further, Company M's letter states: "The employee was living and working in Indiana. On September 1, 2014 the employee transferred to [] Wisconsin location, but failed to update his address to a Wisconsin residence." At the hearing Taxpayer stated he currently lives in Wisconsin at his father's home; Taxpayer states that he now rents out his Indiana home. When asked at the hearing if he had a homestead exemption on the Indiana home, Taxpayer stated that he no longer has a homestead exemption for the Indiana home. No documentation from the county assessor's office was provided to show the homestead exemption status of the home, nor did Taxpayer specify the year he removed the homestead exemption. Also, Taxpayer sent the Department a copy of his Wisconsin income tax return. However, Taxpayer only provided one page of the return and it is unsigned. Lastly, Taxpayer still has an Indiana driver's license.

Taxpayer has not established that he abandoned his Indiana domicile for tax year 2014. The Department finds that Taxpayer spent more than 183 days in Indiana in 2014. Taxpayer did not establish that he removed the homestead exemption on the Indiana home, provided no documentation showing when he began renting out the Indiana home, and he stated that at the hearing that he still has an Indiana driver's license.

Lastly, the Department notes that pursuant to IC § 6-3-3-3, Taxpayer may be able to take a credit on his 2014 Indiana income tax return for any applicable taxes paid to Wisconsin for the year at issue.

FINDING

Taxpayer's protest is denied.

October 24, 2018

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